

National Environmental Policy Act/Nuisance: Federal Appellate Court Addresses Property Owners' Challenge to Oregon Irrigation District Funding



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

01/03/2025

The United States Court of Appeals (“9th Circuit”) addressed in a December 18th memorandum issues arising out of challenges to the Natural Resource Conservation Services (“NRCS”) funding of an irrigation district. *See Matthew James Smith, et al., v. Tumalo Irrigation District, et al.*, (2024 WL 5153597).

The alleged claims against NRCS involve the National Environmental Policy Act (“NEPA”) easement and private nuisance.

Property owners in Central Oregon challenged a federally funded project by the Tumalo irrigation District (“TID”). NRCS provided funding to modernize an irrigation system by replacing over sixty miles of open irrigation canals and laterals with underground piping.

The Plaintiff property owners challenged NRC’s authorization of the project pursuant to NEPA. They also brought easement and private nuisance claims against TID.

The United States District Court granted summary judgment to NRCS and TID.

Plaintiff property owners appealed.

The 9th Circuit first held that NRCS’s authorization of the project under NEPA was not arbitrary, capricious, or an abuse of discretion or otherwise not in accordance with law. This is based on its finding that:

- NRCS properly eliminated the on-farm efficiency upgrades alternative from detailed study because this alternative would have been difficult to implement and would not have met the “purpose and need to improve water delivery reliability and public safety” (noting that the public safety purpose was supported by the administrative record).
- NRCS adequately analyzed the project's cumulative effects on riparian areas and wetlands (the environmental assessment acknowledged effects on riparian vegetation but determined they did not meet the “functional criteria” for wetlands and would benefit downstream riparian areas).

The 9th Circuit also held that the scope of TID’s rights on the Plaintiff property owners’ property was not exceeded. It rejected their interpretation of 43 U.S.C. § 946 on the basis that right-of-way holders could not perform necessary construction of and maintenance on natural ground canals and laterals. This was deemed to be contrary to common sense, the purpose of the statute, and long-standing practice.

Finally, the 9th Circuit agreed that even if Plaintiff property owners' contention that the project would devalue their properties was correct, such claims fail as a matter of law.

The rationale for this conclusion included:

- The project is not an improper modification of TID's easement use, because piping is reasonably necessary for irrigation and the resulting removal of unintended benefits from open canals (the causes of the claimed devaluation of Plaintiffs' properties) does not unreasonably burden Plaintiffs (no evidence suggests that the original parties to the express easement contemplated that the irrigation system would benefit Plaintiffs' property with seepage from open canals).
- Removal of an unintended benefit is not an "invasion of" or "interference with" Plaintiffs' use and enjoyment of their property for the purposes of their nuisance claim.

A copy of the memorandum can be downloaded [here](#).